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No. 82-1511

IN THE
Supreme Court of the United States

OCTOBER TERM, 1982

STATE OF CALIFORNIA, *et al.*,
Cross-Petitioners,

v.

JAMES G. WATT, *et al.*,
Cross-Respondents.

On Cross-Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

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OPPOSITION OF CROSS-RESPONDENTS

HOWARD J. PRIVETT
DONNA R. BLACK
MCCUTCHEN, BLACK, VERLEGER & SHEA
600 Wilshire Boulevard
Los Angeles, CA 90017

E. EDWARD BRUCE*
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Post Office Box 7566
Washington, D.C. 20044
(202) 662-6000

Attorneys for Western Oil & Gas Association, et al.

**Counsel of Record*

QUESTION PRESENTED

Whether the Ninth Circuit properly determined that under Section 307(c)(1) of the Coastal Zone Management Act (CZMA), 16 U.S.C. § 1456(c)(1), the Secretary of the Interior has the ultimate authority to determine that federal activites associated with Outer Continental Shelf (OCS) leasing are consistent "to the maximum extent practicable" with a state CZMA program?

PARTIES TO THE PROCEEDING

The parties to the proceeding underlying this cross-petition are described in the certiorari petition filed by cross-respondent. (*See* WOGA petn. ii-v).

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OPPOSITION OF WESTERN OIL & GAS ASSOCIATION

Western Oil & Gas Association (WOGA), and the ten WOGA members who joined in its petition seeking review of the Ninth Circuit's decision in this case, *California* v. *Watt*, 683 F.2d 1253 (1982), rely upon their petition in No. 82-1327 for discussion of the opinions below, the jurisdiction of this Court, and the statement of the case. (*See* WOGA petn. 1-8).

THIS COURT SHOULD NOT GRANT THE CONDITIONAL CROSS-PETITION FILED BY RESPONDENTS

Respondents in Nos. 82-1326 & 82-1327 have filed a "conditional" cross-petition, seeking to have this Court review the Ninth Circuit's delineation of the respective authorities of the federal and state governments under Section 307(c)(1) of the Coastal Zone Management Act (CZMA), 16 U.S.C. § 1456(c)(1). The lower court felt

obliged to decide this issue in the light of its conclusion that OCS lease sales are federal "activities directly affecting the coastal zone" within the meaning of that statute. Respondents/cross-petitioners admit that, in all likelihood, it is not necessary for the Court to grant their cross-petition and confess that they are filing it "out of an abundance of caution" to ensure that they can pursue their arguments concerning all aspects of the Ninth Circuit's construction of Section 307(c)(1).

Respondents/cross-petitioners have offered no compelling reasons for the Court's grant of their cross-petition.

First, it is readily apparent from both the Ninth Circuit's decision and from the arguments advanced by cross-petitioners, that the issue which they tender would be of no practical significance to them were the Court to reverse the Ninth Circuit's interpretation of the phrase "directly affecting." Should the Court take such action, there would rarely be any cases involving a state's assertion of authority under Section 307(c)(1) at the leasing stage of an OCS project.[1]

Second, should the Court agree, wholly or in part, with the Ninth Circuit's construction of Section 307(c)(1) as requiring the preparation of a consistency determination at the leasing stage of all OCS projects, it would, in all likelihood, like the Ninth Circuit, feel obliged to address

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[1] In the reply brief which WOGA has simultaneously filed in No. 82-1327 (p. 7 n. 1), we noted an instance in the past where the Department of the Interior had prepared a limited consistency determination in connection with OCS leasing under the federal and intervenor-petitioners' interpretation of the statute. However, it dealt with very limited impacts associated with the preliminary activities that occurred at the leasing stage of a unique OCS project.

the ramifications of this construction of the Act. Thus, should the Court not reverse the Ninth Circuit's construction of "directly affecting," it will have ample opportunity to discuss the issue of concern to respondents/cross-petitioners in the context of the issues raised by petitioners.

CONCLUSION

For the reasons stated above, the cross-petition for a writ of certiorari should be denied.

Respectfully submitted,

HOWARD J. PRIVETT
DONNA R. BLACK
McCUTCHEN, BLACK, VERLEGER & SHEA
600 Wilshire Boulevard
Los Angeles, CA 90017

E. EDWARD BRUCE*
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Post Office Box 7566
Washington, D.C. 20044
(202) 662-6000

Attorneys for Western Oil & Gas Association, et al.

Of Counsel:

AMOCO PRODUCTION COMPANY
DONALD J. BRANNAN

ATLANTIC RICHFIELD COMPANY
JAMES R. COFFEE

CHAMPLIN REFINING CO.
J. D. HENRY

CONOCO, INC.
STEPHEN L. BAKER

ELF ACQUITAINE OIL & GAS CO.
TED G. WHITE

EXXON CORPORATION
MELINDA F. HARMON

GETTY OIL COMPANY
CLOY D. MONZINGO

GULF OIL CORPORATION
KENNETH M. BROWN

PHILLIPS PETROLEUM COMPANY
THOMAS M. BLUME

SHELL OIL COMPANY
DONALD F. GALLION

*Counsel of Record